

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-CR-42
)	
BRETT EDWARD DIRR and)	(PHILLIPS/SHIRLEY)
RENEE DIRR,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case came before the Court on March 19, 2009, for a motion hearing on Defendant Renee Dirr's Motion to Continue [Doc. 102] and Defendant Brett Dirr's Notice of Joinder of Motion to Continue Trial [Doc. 103], filed on March 3 and March 5, 2009, respectively. Assistant United States Attorneys Charles E. Atchley, Jr., and Frank M. Dale, Jr., appeared on behalf of the government. Attorney Alan S. Richey appeared by telephone to represent Mr. Dirr, and Mrs. Dirr represented herself. Both defendants were present.

In her motion [Doc. 102], Mrs. Dirr asks the Court to continue the March 31, 2009 trial date in order to allow the parties adequate time to prepare for trial. She states that the parties are awaiting rulings on the defendants' suppression motion [Doc. 55] and motion for a bill of particulars [Doc. 53] as well as the government's *motion in limine* [Doc. 21] and that they cannot fully prepare for trial until they know what evidence will be suppressed or allowed. She also states

that once this Court rules upon the motions, the parties will need time to file any objections and for the District Court to rule upon those objections. Mr. Dirr joins [Doc. 103] in the request for a continuance, adding that his attorney has multiple trials scheduled in the spring and summer and is not available until late August. He also requests additional time to attempt to work out stipulations with the government, which should serve to shorten the length of the trial. The government has responded [Doc. 104] that it does not oppose a continuance of the trial.

At the March 19 hearing, Mrs. Dirr agreed that she needed additional time to receive rulings on the pending motions, to make any objections to the District Court, for the District Court to rule upon those objections, and to prepare for trial in light of the ultimate rulings on these issues. Mr. Dirr's counsel agreed that he would like additional time to work out stipulations with the government and that a continuance of the trial to August was necessary in order to preserve Mr. Dirr's continuity of counsel due to his present trial schedule. All parties agreed that the time between the filing of the motion and the new trial date would be fully excludable under the Speedy Trial Act.

The Court finds the motion for a continuance to be well-taken and that the ends of justice served by granting a continuance outweigh the interest of the defendants and the public in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). Noting the swiftly approaching March 31, 2008 trial date, the Court finds that the failure to grant a continuance would deprive the defendants of time to prepare for trial. The Court has heard evidence and/or argument on the pending motions and has considered the supplemental briefs filed by the parties on February 13. At the March 19 hearing, the parties agreed that they would like the opportunity to file reply briefs to the opposing party's supplemental brief(s). The Court granted both defendants and the government until April 6, 2009,

to file reply briefs. Once the Court receives and considers those briefs, it will issue a report and recommendation on the pending motion to suppress. See 18 U.S.C. § 3161(h)(1)(F) & (J). The Court is also in the process of completing its rulings on the other pending motions as well. The parties will need time to file objections to the report and/or rulings, and the District Court will need time to rule upon the report and recommendation and any objections. Finally, the parties will need time to prepare for trial in light of any such rulings. The Court finds that all of this could not take place before the March 31, 2009 trial date or in less than five months. Thus, without a continuance, counsel would not have the reasonable time necessary to prepare for trial despite their use of due diligence. See 18 U.S.C. § 3161(h)(8)(B)(iv). Moreover, in light of defense counsel for Mr. Dirr's present trial schedule, a five-month continuance is necessary to assure Mr. Dirr continuity of counsel. See 18 U.S.C. § 3161(h)(8)(B)(iv).

Accordingly, Mrs. Dirr's Motion to Continue [**Doc. 102**] and Mr. Dirr's Notice of Joinder of Motion to Continue [**Doc. 103**], which has been filed as a motion, are **GRANTED**. The trial of this matter is reset to **August 25, 2009**. The Court also finds, and the parties agreed, that all the time between the filing of the motion to continue on **March 3, 2009**, and the trial date of August 25, 2009, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(1)(F), (J), and (h)(8)(A)-(B). With regard to further scheduling, the Court has set a filing deadline of **April 6, 2009**, for the parties to file reply briefs to the issues raised in the supplemental briefs [Docs. 98, 99, and 100].

Accordingly, it is **ORDERED**:

(1) Mrs. Dirr's Motion to Continue [**Doc. 102**] and Mr. Dirr's Notice of Joinder of Motion to Continue [**Doc. 103**] are **GRANTED**;

(2) The trial of this matter is reset to commence on **August 25, 2009**,

at 9:00 a.m., before the Honorable Thomas W. Phillips, United States District Judge;

(3) All time between the filing of the Motion to Continue on **March 3, 2009**, and the new trial date of **August 25, 2009**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein; and

(4) The parties have until **April 6, 2009**, to file reply briefs limited to the issues raised in the supplemental briefs filed on February 13, 2009.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge